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10                   UNITED STATES DISTRICT COURT  
11                   WESTERN DISTRICT OF WASHINGTON  
12                   AT TACOMA

13 CHARLES VINCENT REED,

14                   Plaintiff,

15                   v.

16 MICHAEL HUGHES,

17                   Defendant.

Case No. C09-5677BHS/JRC

REPORT AND RECOMMENDATION

NOTED February 18, 2011

18                   This 42 U.S.C. § 1983 civil rights action has been referred to the undersigned Magistrate  
19 Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judges' Rules MJR  
20 1, MJR 3, and MJR 4.

22                   Before the court is a motion for default for defendant Hughes (ECF No. 38). On  
23 September 28, 2010, the Honorable Judge Settle entered an order dismissing part of this case  
24 (ECF No. 34). Claims against defendant Hughes were not dismissed. After entry of that order,  
25 defendant Hughes had fourteen days to file an answer. See Fed. R. Civ. P. 12 (a)(4)(B) No  
26 answer was filed.

REPORT AND RECOMMENDATION- 1

1 On November 19, 2010, the court entered an Order to Show Cause as the action was not  
2 being prosecuted (ECF No. 19). In response, on December 14, 2010, plaintiff moved for entry of  
3 default against defendant Hughes (ECF No. 38). Two days later, on December 16, 2010,  
4 defendant Hughes filed an answer (ECF No. 43).

5 Because defendant Hughes has cured the default in this case by filing an answer, the  
6 court recommends that the motion for default be DENIED. The court has discretion not to enter  
7 default where a defendant has cured the default and may have a meritorious defense. Mendoza  
8 v. Wight Vineyard Management, 783 F.2d 941, 945-46 (9th Cir. 1986).

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10 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen  
11 (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6.  
12 Failure to file objections will result in a waiver of de novo review by the District Court Judge. See  
13 28 U.S.C. 636 (b)(1)(C). Accommodating the time limit imposed by Rule 72(b), the clerk is  
14 directed to set the matter for consideration on **February 18, 2011**, as noted in the caption.

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16 Dated this 24th day of January, 2011.

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20 J. Richard Creatura  
21 United States Magistrate Judge  
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